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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD MACK MORGAN,

Defendant and Appellant.

A154315

(Marin County
Super. Ct. No. CIV1602528)

Donald Mack Morgan contends the trial court abused its discretion in denying his unopposed petition for a certificate of rehabilitation (Pen. Code, § 4852.01 et seq.).¹ The People concede the trial court considered inappropriate factors and remand is appropriate. We reverse and remand for reconsideration.

BACKGROUND

A.

Under California law, a convicted felon may request a Governor's pardon via two statutory avenues: (1) a pardon application filed directly with the Governor (§ 4800 et seq.) and (2) a petition for certificate of rehabilitation filed in the superior court (§ 4852.01 et seq.). (*People v. Ansell* (2001) 25 Cal.4th 868, 871, 873–876, 890 (*Ansell*)). The latter petition, if granted, becomes both an automatic application for a full pardon by the Governor and a judicial recommendation for such a pardon. (§ 4852.16; *Ansell*, at pp. 875–876, 891.) A convicted felon becomes eligible for a certificate of

¹ Undesignated statutory references are to the Penal Code.

rehabilitation, after the successful completion of his or her sentence and the expiration of an additional period of rehabilitation (§§ 4852.03, subd. (a), 4852.06; *People v. Schoop* (2012) 212 Cal.App.4th 457, 467), by living an honest and upright life, conducting himself with sobriety and industry, exhibiting a good moral character, and conforming to and obeying all laws. (§§ 4852.05, 4852.06; *Ansell*, at p. 875.)

After a petition is filed, the trial court may compel the production of documents, direct the district attorney to investigate, and hold an evidentiary hearing. (§§ 4852.1, 4852.11, 4852.12; *Ansell, supra*, 25 Cal.4th at p. 875.) “[I]f after hearing, the court finds that the petitioner has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship, the court may make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner.” (§ 4852.13, subd. (a).) In other words, for the petition to be granted, the court must find the petitioner has rehabilitated. (*Ansell*, at pp. 875–876.)

“When the trial court grants a petition for a certificate of rehabilitation it is ‘essentially making a personal representation to the Governor that [the convicted felon is] worthy of a pardon.’ ” (*People v. Ziegler* (2012) 211 Cal.App.4th 638, 668.) “However, regardless of which statutory application procedure is used, and notwithstanding any recommendation by the superior court, the pardon decision is discretionary, and rests ultimately with the Governor.” (*Ansell, supra*, 25 Cal.4th at p. 891; accord, Cal. Const., art. V, § 8, subd. (a).)

B.

In 1975, when he was 26 years old, Morgan was convicted of robbery (§ 211) and murder (§ 187). According to a summary provided at Morgan’s parole suitability hearing, Morgan and an accomplice held up multiple victims at gunpoint, telling them to “hand over everything they had.” Shortly after the order was given, a shot was fired, killing Donald Scott. Morgan and his accomplice again demanded the victims’ property and, after obtaining cash and wallets, fled. Morgan confessed but stated he did not intend to shoot anyone, the gun he held had accidentally discharged, and he had been convinced

by a friend to participate in the scheme. Morgan was sentenced to a term of seven years to life in prison. After serving 10 years in prison, he was released on parole.

C.

Thirty years later, Morgan filed a petition for a certificate of rehabilitation in the Marin County Superior Court. Counsel was appointed to represent Morgan, and his petition was later supplemented with exhibits, including several declarations in which Morgan himself, along with his friends and family, attested to Morgan's satisfaction of the statutory criteria. Specifically, Morgan presented evidence of his remorse. The exhibits also showed Morgan had no disciplinary reports in prison and a record of exemplary work, academic achievement, and participation in self-help groups and therapy. A prison psychiatrist concluded Morgan identified with "positive social values" and had a lower than average potential for violence. Although he had a record of juvenile reprimands before committing the robbery and murder, Morgan had not suffered a parole violation or any conviction after his release.

Morgan is married, has two children and six grandchildren, and is an active source of support to his family. Morgan is active in his church and community, volunteering with the Fatherhood Council of Marin and forming another youth mentoring organization. He does not drink or use illegal drugs.

Morgan learned upholstery in the prison furniture factory and was employed for 28 years as an upholsterer. He owned and ran the business for 10 years until he suffered a rotator cuff injury. Morgan has since had difficulty finding employment because of his health and criminal record but, at the time of his petition, had been working as a school crossing guard for three years.

Although the People initially opposed the petition due to concerns regarding the adequacy of the record and an inability to contact Scott's family, the People later withdrew the objection and conceded the petition should be granted. The prosecutor stated, "[Morgan is] a pillar of society [and] a model citizen [who has] done wonderful things with his life over the last 30 years."

D.

After a hearing, the trial court denied Morgan's petition for a certificate of rehabilitation. The court explained: "[Morgan] has met and/or satisfied the [eligibility] requirements by leading a law-abiding life and contributing to the community. However, the court will not . . . recommend a pardon." The court expressed its discomfort, stating that "[a] pardon is meant to indicate forgiveness of a particular crime, either because a person was wrongfully convicted or the punishment was not appropriate for the crime committed." Granting the petition, "would be a statement from the bench that the criminal justice system forgives [Morgan] for his actions. . . . And it really makes me uncomfortable to think that I in this position should be making that decision, or that anyone sitting on the bench should be making that decision about acts that happened decades ago."

DISCUSSION

Morgan contends the trial court abused its discretion by considering improper criteria when it denied his unopposed petition for a certificate of rehabilitation. We agree.

A.

"The hurdles erected by the Legislature to obtain a certificate of rehabilitation are not intended to be easily surmounted. The trial courts are entrusted with the responsibility, in the exercise of a sound discretion, to ensure that the strict statutory standards for rehabilitation are maintained." (*People v. Blocker* (2010) 190 Cal.App.4th 438, 445 (*Blocker*)). A trial court's decision to grant or deny a petition for certificate of rehabilitation is reviewed for abuse of discretion resulting in a miscarriage of justice. (*Ansell, supra*, 25 Cal.4th at pp. 887–888; *Blocker*, at pp. 440, 442.) A trial court abuses its discretion when the decision exceeds the bounds of reason (*Blocker*, at p. 444), or when the trial court is mistaken about the scope of its discretion (*People v. Ziegler, supra*, 211 Cal.App.4th at p. 668). " " " " "The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion," ' ' ' ' ' the scope of which "derives from the common law or statutes under which discretion is conferred." (*Id.* at pp. 667–668.)

B.

The People concede the trial court abused its discretion and urge us to remand the matter for further proceedings. Although “there is no circumstance under which the statutory scheme requires or guarantees issuance of a certificate of rehabilitation” (*Ansell, supra*, 25 Cal.4th at pp. 887–888), the People’s concession is appropriate.

“To enter an order known as a certificate of rehabilitation, the superior court must find that the petitioner is both rehabilitated and fit to exercise the rights and privileges lost by reason of his conviction.” (*Ansell, supra*, 25 Cal.4th at pp. 875–876, citing § 4852.13, subd. (a).) “[T]he superior court conducts a thorough inquiry into the applicant’s conduct and character from the time of the underlying crimes through the time of the certificate of rehabilitation proceeding. (§§ 4852.1–4852.12.) The standards for determining whether rehabilitation has occurred are high. (§§ 4852.05, 4852.13(a); see §§ 4852.11, 4852.13(b).)” (*Ansell*, at p. 887.) “The overall goal of the statute [is] to restore civil and political rights of citizenship to ex-felons who have proved their *rehabilitation*.” (*People v. Lockwood* (1998) 66 Cal.App.4th 222, 230, italics added, citing § 4852.17.)

Here, rather than focusing on whether Morgan demonstrated rehabilitation (§ 4852.13, subd. (a); *Ansell, supra*, 25 Cal.4th at pp. 875–876), the trial court improperly focused on irrelevant factors: Morgan’s innocence or the judge’s willingness to “forgive” Morgan’s crimes. Although a pardon may be equated with forgiveness (see *In re Lavine* (1935) 2 Cal.2d 324, 329 [“very essence of a pardon is forgiveness or remission of penalty”]), that question was not presented. If granted, Morgan’s petition for a certificate of rehabilitation would be deemed an application for a pardon with the court’s recommendation that the Governor grant a full pardon (§§ 4852.13, subd. (a), 4852.16), but the Board of Parole Hearings would review the recommendation, and the ultimate pardon decision would remain the Governor’s. (§ 4852.16, subd. (b); *Blocker, supra*, 190 Cal.App.4th at p. 440, fn. 2.) We do not read the statute as requiring the trial court to invade the executive’s power to determine whether Morgan deserves mercy.

The court also incorrectly equated innocence with rehabilitation. (See *Blocker, supra*, 190 Cal.App.4th at p. 443 [guilt is the predicate for pardon]; *In re Lavine, supra*, 2 Cal.2d at p. 329 [pardon “implies guilt”].) Individuals who are arrested and later found factually innocent are entitled to have records of criminal charges sealed and destroyed. (§ 851.8.) But this is not the remedy Morgan sought. In fact, a claim of innocence would cut the other way on Morgan’s petition for a certificate of rehabilitation. “Because ‘rehabilitation logically assumes guilt’ ” a court considering a petition for certification of rehabilitation may properly consider the petitioner’s refusal to acknowledge guilt “ ‘because acknowledgement of guilt is a critical first step towards rehabilitation.’ ” (*Blocker*, at p. 442.)

Morgan presented uncontradicted evidence showing his crimes resulted from his immaturity and youthful recklessness. There is also no dispute that Morgan has, for over 40 years thereafter, led a law-abiding and productive life. After reviewing Morgan’s supplemental evidence, the People conceded his petition should be granted. Because no other basis for the decision appears in the record, we assume the trial court relied on the improper considerations discussed above. We will remand for reconsideration of Morgan’s petition under the appropriate standard. To the extent the trial court desires further information about Morgan’s rehabilitation or crimes, it may direct further investigation, and it may compel the production of judicial, correctional, and law enforcement records. (See §§ 4852.1, 4852.12; *Ansell, supra*, 25 Cal.4th at p. 875.)

DISPOSITION

The order denying the petition for a certificate of rehabilitation is reversed and the matter is remanded to the trial court for reconsideration consistent with this opinion.

BURNS, J.

WE CONCUR:

JONES, P. J.

NEEDHAM, J.

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